

## 48A C.J.S. Judges § 361

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### X. Special or Substitute Judges and Like Judicial Officers


#### B. Selection and Appointment of Special or Substitute Judges

##### 2. Selection and Appointment Procedures of Special or Substitute Judges

## § 361. Form of selection or appointment of special or substitute judge

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  16(.5), 16(1)

**In the absence of requirement of law, no particular form is necessary for the selection or appointment of one judge to act for another.**

In the absence of requirement of law, no particular form is necessary for the selection or appointment of one judge to act for another.<sup>1</sup> Under a statute so providing, a motion for a substitute judge must be made within a prescribed time after institution of the suit.<sup>2</sup> Under some statutes, an affidavit is to be filed by the party moving for a substitute judge stating the reasons necessary for doing so.<sup>3</sup> Such an affidavit is not jurisdictional.<sup>4</sup> Where the law permits a selection or designation without assigning grounds for doing so, the reason for the request or designation need not be stated.<sup>5</sup>

In the absence of a constitutional or statutory requirement, the selection or designation need not be in writing.<sup>6</sup> Under some provisions, notice of the substitution of judges must be given to the parties,<sup>7</sup> and when a judge is designated as a substitute judge in a proceeding, and counsel for the parties are notified of it, and that judge is not disqualified, he or she is then the judge presiding in the proceeding.<sup>8</sup> The letter or order of appointment may be entered nunc pro tunc, and the appointee may act after the appointment and before the entry is made.<sup>9</sup> It has been stated that even if designation of a substitute judge is necessary, such designation may be waived by the parties.<sup>10</sup>

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Footnotes

- 1 Ill.—People ex rel. Gregg v. Tauchen, 415 Ill. 91, 112 N.E.2d 94 (1953).
- Oral request permitted**
- N.Y.—People ex rel. Egitto v. LaVallee, 18 A.D.2d 736, 235 N.Y.S.2d 423 (3d Dep't 1962).
- 2 Tex.—San Antonio General Drivers, Helpers Local No. 657 v. Thornton, 156 Tex. 641, 299 S.W.2d 911 (1957).
- 3 S.C.—Peoples Nat. Bank of Greenville v. Manos Bros., Inc., 226 S.C. 257, 84 S.E.2d 857, 45 A.L.R.2d 1070 (1954).
- 4 **Nunc pro tunc filing of affidavit permissible**
- S.C.—Peoples Nat. Bank of Greenville v. Manos Bros., Inc., 226 S.C. 257, 84 S.E.2d 857, 45 A.L.R.2d 1070 (1954).
- 5 Mo.—State ex rel. Lamm v. Mid-State Serum Co., 272 S.W. 99 (Mo. Ct. App. 1925).
- 6 Neb.—Maher v. State, 144 Neb. 463, 13 N.W.2d 641 (1944).
- 7 Mont.—State ex rel. Eden v. District Court of Fifth Judicial Dist. In and For Jefferson County, 109 Mont. 263, 95 P.2d 447 (1939).
- Tenn.—State v. Bomer, 179 Tenn. 67, 162 S.W.2d 515 (1942).
- 8 Mont.—State ex rel. Kinman v. District Court of Second Judicial Dist. In and For Silver Bow County, 146 Mont. 74, 404 P.2d 517 (1965).
- 9 Ind.—Kambieskey v. State, 26 Ind. 225, 1866 WL 2462 (1866).
- 10 U.S.—U.S. v. Rakes, 74 F. Supp. 645 (E.D. Va. 1947).

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